IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

WP(C).No. 23445 of 2004(N)

AGAINST THE ORDER IN IA.17/2000 IN
OS.459/1989 of PRL.M.C., KOLLAM
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PETITIONER:

PADMINI S.,
KADAPPUZHA VADAKKETHIL VEEDU, MEENATHU CHERRY,
SAKTHIKULANGARA, KOLLAM.

BY ADV. SRI.P.B.SURESH KUMAR

RESPONDENTS:
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1. K.KANANKARAJAN,
KADAPPUZHA VADAKKATHIL VEEDU,
MEENATHU CHERRY, KOLLAM VILLAGE.

2. C.KRISHNAKUMARI,
KADAPPUZHA VADAKKATHIL VEEDU,
MEENATHU CHERRY, KOLLAM VILLAGE.

3. KRISHNAN SIVARAJAN,
KADAPPUZHA VADAKKATHIL VEEDU,
MEENATHU CHERRY, KOLLAM VILLAGE.

4. AJIKUMAR,
KADAPPUZHA VADAKKATHIL VEEDU,
MEENATHU CHERRY, KOLLAM VILLAGE.

5. DILEEPKUMAR,
KADAPPUZHA VADAKKATHIL VEEDU,
MEENATHU CHERRY, KOLLAM VILLAGE.

BY ADV. SMT.T.S.MAYA
SMT.K.G.BINDU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC NO.23445/04)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE COMMON JUDGMENT IN O.S.709/89 AND O.S.459/89 OF THE PRINCIPAL MUNSIFF COURT, KOLLAM DATED 30.7.1994.

EXT.P2: TRUE COPY OF I.A.NO.16/2000 IN A.S.NO.158/95 FILED BEFORE THE ADDITIONAL DISTRICT COURT, KOLLAM DATED 5.1.2000.

EXT.P3: TRUE COPY OF I.A.NO.17/2000 IN A.S.NO.158/95 FILED BEFORE THE ADDITIONAL DISTRICT COURT, KOLLAM DATED 5.1.2000.

EXT.P4: TRUE COPY OF THE COMMON JUDGMENT OF THE THIRD ADDITIONAL DISTRICT JUDGE, KOLLAM IN A.S.NOS.158 OF 1995 AND 159/95 DT. 25.8.2001.

EXT.P5: TRUE COPY OF THE ORDER PASSED BY THE MUNSIFF IN I.A.NO.17/2000 IN O.S.NO.459/89 DATED 20.2.2004.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.23445 of 2004

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Dated: 11th June, 2007

JUDGMENT

Ext.P5 order passed by the learned Munsiff dismissing an application for issuance of a commission (Ext.P3) is under challenge. The learned Munsiff dismissed the commission application mainly on the ground of inordinate delay. But then, as rightly submitted by the learned counsel for the petitioner, the commission application was filed by the petitioner in the court of appeal which was made over along with an amendment application to the court below while passing order of remand by the appellate court. The learned Munsiff allowed the amendment application and I feel that having allowed the amendment application, the learned Munsiff was not justified in dismissing the commission application on the ground of delay. The application could have been allowed by imposing terms on the petitioner. Accordingly the Writ Petition will stand allowed. Ext.P5 is set aside and I.A.No.17 of 2000 will stand allowed on condition that the petitioner pays a sum of Rs.1500/- to the respondents either directly or through their Advocate in this court within three weeks from today and on a further condition that within the aforesaid time-limit the petitioner will pay a sum of Rs.500/- to the Kerala High

Court Legal Services Committee. If payments are not made as above, the Writ Petition will stand dismissed and the impugned order will stand confirmed. If payments are made as above, this judgment becomes operative and the court below will appoint an Advocate of that court as Commissioner.

srd **PIUS C.KURIAKOSE, JUDGE**